Island Application No. 11 of 1984 issued on 20 January 1984 wherein HLF is seeking an order for vacant possession of the shophouse against the chief tenant under section 18 of the Act and that this serves to confirm that damages would be an adequate remedy for the sub-tenant.

I regret I find this submission unacceptable. Even if HLF is able to satisfy the Rent Tribunal as to the requirements of section 18 of the Act, the latter will still have to consider the question of public interest before exercising the discretion to make the order: see *Lee Kwee Foh Ltd.* v. *Yeong Choon Foong.*[16] In other words, HLF may or may not succeed in obtaining the possession order under section 18 of the Act. I do not therefore consider it right for me to speculate upon the result of those proceedings. Accordingly, I would hold that the pendency of the proceedings before the Rent Tribunal is irrelevant to the present application for discharge of the injunction.

In these circumstances, it is unnecessary for me to consider the question of the balance of convenience for "it is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both that the question of balance of convenience arises" (per Lord Diplock in *American Cyanamid*[9] at p. 511). But, I think that for the sake of completeness I should deal with this question.

Now, it is common ground that HLF had locked the door separating the back portion from the front portion or had, at least, approved of this measure, thereby preventing the sub-tenant from having any access to the bathroom and had, on its own admission, only as a result of a solicitor's letter, brought workers to remove the back door so as to allow access to the bathroom only via the back lane. Clearly, at the very least, this was an attempt to interfere with the sub-tenant's peaceful and quiet enjoyment of the premises.

And so, when, as in this case, to discharge the injunction might have the effect of depriving the sub-tenant of the peaceful possession and enjoyment of his home, which is subject to the Act, then this is likely to be more serious than the prejudice which would be caused to the owners HLF by reason of the continuance of the injunction. It is my opinion, therefore, that the balance of convenience clearly favours the sub-tenant rather than HLF.

For the avoidance of doubt, I should perhaps add, that in so concluding, I have paid especial regard to the interests of all parties concerned, keeping in mind their foreseeable positions, considerations of hardship, the balance of convenience and all other relevant discretionary factors.

In all the circumstances, the application to discharge the injunction is dismissed with costs.

Application dismissed.

Solicitors: *Ooi, Lee & Co.; Chew Tan & Lim.*

GISSCO SDN. BHD. v. BLACKGOLD (M) SDN. BHD.

[O.C.J. (Tan Chiaw Thong J.) 27 November 1987]

[Miri – Suit No. MR295 of 1986]

Civil Procedure – Summary judgment – Whether supporting affidavit a sufficient compliance with Order 14 rule 2(1) – Whether defence bona fide – Leave to defend.

The plaintiff applied for summary judgment under Order 14 of the Rules of the High Court 1980. The plaintiff submitted a statement of claim together with a supporting affidavit which purported to be a compliance with Order 14 rule 2(1). The defendant contended that the supporting affidavit did not comply with Order 14 rule 2(1).

Held, dismissing the plaintiff's application: (1) the supporting affidavit, being made under affirmation and following paragraph 1 of Form 18 containing the allegation that the defendant is indebted to the plaintiff in the amount claimed and for the matters specified therein, was a sufficient compliance with Order 14 rule 2. It was in effect a verification of the facts on which the claim of the plaintiff was based. The supporting affidavit was not defective;

(2) although the defendant may not have satisfied the court with regard to any specific issue or question in this dispute which should go to trial, it has satisfied the court that for some reason there should be a trial of the claim of the plaintiff;

(3) the court was not satisfied that the defence had been made *mala fide*.

Cases referred to:

(1) *McLardy* v. *Slateum* (1890) 24 Q.B.D. 504 (refd).
(2) *Wallingford* v. *Mutual Society* (1880) 5 App. Cas. 685 (cited).
(3) *Miles* v. *Bull* [1968] 3 All E.R. 632 (folld).

SUMMONS-IN-CHAMBERS.

M.S. Sandhu for the plaintiff.

C.M. Kanavathi for the defendant.

Cur. Adv. Vult.

Tan Chiaw Thong J.: By this summons-in-chambers, the plaintiff applies for summary judgment against the defendant under Order 14 on the ground that there is no defence to this action. This court having earlier dismissed the plaintiff's summons-in-chambers after a hearing in chambers, these proceedings are concerned with further argument in open court upon an application made by the plaintiff.

In his written submission, learned counsel for the plaintiff has emphasized that the requirements of Order 14 rule 2(1) of the Rules of the High Court 1980 (the 1980 Rules) have been complied with by the plaintiff and thereupon onus falls upon the defendant to satisfy the court that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of the claim or part thereof. Otherwise, the court should give judgment in favour of the plaintiff. It was submitted that the supporting affidavit of the managing director of the plaintiff company, Haji Mohd. Saufi, has complied with Form 18 in list of forms under the 1980 Rules and that, therefore, there has been a compliance with Order 14 rule 2(1) which reads:

"2. (1) An application under rule 1 must be made by summons supported by an affidavit in Form 18 verifying the facts on which the claim, or the part of a claim, to which the application relates is based and stating that in the deponent's belief there is no defence to that claim or part, as the case may be, or no defence except as to the amount of any damages claimed."

It was submitted that the plaintiff has verified the facts in the statement of claim by paragraph 2 of the supporting affidavit mentioned, which, *inter alia*, states that: "The full particulars of the said claim appear by paragraph 3 of the statement of claim and by the statement of account now produced to me, marked and annexed hereto as 'MS 1'." There is also a paragraph complying with the requirement that in the deponent's belief there is no defence to the plaintiff's claim.

It was submitted by learned counsel for the defendant that paragraph 2 of the plaintiff's supporting affidavit is no compliance with Order 14 rule 2 in that it merely repeats what is alleged in the statement of claim, and that there should be a specific verification in the supporting affidavit of the facts on which the claim of the plaintiff is based. It was also submitted that the supplementary affidavit of the same deponent in effect does not carry the matter further. I shall come back to this supplementary affidavit later in this judgment.

It is not in issue that the supporting affidavit follows the form set out in Form 18. It is to be observed that paragraph 3 of the said Form is a compliance with the requirement of Order 14 rule 2 attributing to the deponent the belief that there is no defence to this action. The question to be considered is whether paragraph 2 of the supporting affidavit of Haji Mohd. Saufi, in adopting and following the wording in paragraph 1 of Form 18, is a sufficient compliance with the requirement of verifying the facts on which the statement of claim is based. Paragraph 2, which as stated follows paragraph 1 of Form 18, commences with the allegation that the defendant is truly indebted to the plaintiff company in the sum as claimed for the price of goods supplied at the request of the defendant, labour and service charges and/or expenses incurred on behalf of the defendant at its request. This follows the wording of paragraph 3 of the statement of claim. Then paragraph 2 of the supporting affidavit ends by stating that the the full particulars of the claim appear by paragraph 3 of the statement of claim and by the statement of account marked and annexed thereto as "MS 1", which is a statement of account exhibited as ex. "A" to the statement of claim.

In my view, the supporting affidavit, being made under affirmation and following paragraph 1 of Form 18 containing the allegation that the defendant is indebted to the plaintiff in the amount as claimed and for the matters specified therein, is a sufficient compliance with Order 14 rule 2, because I am of the opinion that it is in effect a verification of the facts on which the claim of the plaintiff is based.

If the contention of learned counsel for the defendant is to be accepted that there should be something more and express use of the word "verify" should have been made in the supporting affidavit, then the same argument would apply to paragraph 3 of Form 18 which states that the deponent verily believes that there is no defence to the action, as required under the same Order 14 rule 2 which after mentioning that the affidavit must be in Form 18 also requires that it must also state that in the deponent's belief there is no defence to the claim or part thereof. In my view, if Form 18 is not meant to be a compliance with Order 14 rule 2, paragraph 3 of that Form would not be necessary to be inserted therein. In my opinion, it is inserted therein with the object of complying with the requirement of Order 14 rule 2 stating the deponent's belief that there is no defence to the plaintiff's claim. Likewise, in my

view, paragraph 1 of that Form is inserted therein with the view of complying with the same Order to verify the facts on which the plaintiff's claim is based. Accordingly, I am of the opinion that the supporting affidavit is not defective and is a sufficient compliance with Order 14 rule 2.

It is not disputed, and I accept it to be the legal position, that once compliance is made by the plaintiff with Order 14 rule 2, the burden falls upon the defendant to satisfy the court with repect to the claim or part of the plaintiff's claim that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of the claim or part thereof. Otherwise the court may give judgment in favour of the plaintiff. Learned counsel for the plaintiff has submitted that in this respect, paragraphs 2, 3, 4 and 5 of the defence contain nothing more than mere denials, and that paragraph 6 of the defence, in raising the alternative plea that the prices charged by the plaintiff were not agreed prices, and were not fair or reasonable but unreasonable and excessive, has not furnished the particulars thereof and stated what were the agreed prices or stated facts to support that the prices charged were excessive or unreasonable, having the effect, as submitted, of such a defence not having been made *bona fide*.

It was submitted that the defendant has made two payments of $70,540 and $12,615 as specified in the statement of account "MS 1". Further, that the said payments have been deducted from the payments due for goods supplied at the request of the defendant, and labour and service charges and/or expenses incurred on behalf of the defendant under the invoices mentioned and particulars had been given in the statement of account. Also, as regards the payment of $12,615, that it was for part payment of invoice No. 0056; and lastly, by the supplementary affidavit of Haji Saufi, the plaintiff has stated that the payment of $70,540 was made by the defendant under MBB cheque No. 017102; and that, therefore, from these facts it may be reasonably inferred that it did supply goods, labour and service at the request of the defendant, and/or incur expenses at its request. Further, it was emphasized that the defendant has not denied that it did make the above payments or sought to explain the same or alleged that the payments were not in any way related to the invoices, giving rise to suspicions of the defences set out in paragraphs 2 to 5 of the defence. It was also submitted that in the ordinary case, a supporting affidavit would be necessary from the defence, and a quotation from the 1979 *Supreme Court Practice* was made. In this connection, it is to be noted that in the same volume in the commentary on Order 14 rule 3 against the marginal figure 14/3–4/3, it is there stated that "the fact that he has served a defence may be sufficient to enable a defendant to get leave to defend, but not if it is a sham defence served at or soon after appearance (see *McLardy* v. *Slateum*[1])." Hence, for the purposes of these proceedings, I do not consider that failure to file an affidavit in opposition precludes the court from considering the defence as a mode of opposition to the plaintiff's summons-in-chambers. It is true that, had there been an affidavit in opposition, that affidavit should condescend upon particulars and that a mere denial that the defendant is indebted will not suffice (see *Wallingford* v. *Mutual Society*[2] per Lord Blackburn at p. 704); and it is not in dispute that the defence must show that it is a *bona fide* defence.

Here, the defence is a multiple-barrelled one. Firstly, by paragraph 2 the defendant denies having requested for the supply of goods specified in the statement of account. Paragraph 3 denies the provision of labour or services or materials supplied by the plaintiff; and paragraph 4 denies that the plaintiff did provide such labour or services or materials or any part thereof at the request of the defendant or under such circumstances as to render the defendant liable in respect thereof. Paragraph 5 alleges that the defendant had not acknowledged any of the invoices or delivery orders; and lastly, by paragraph 6 it alleges that the prices charged by the plaintiff were not agreed prices, were not fair or reasonable but unreasonable and excessive.

In my view, having regard to the nature of the defences raised by the defence, it has to be considered in the light of the evidence filed in relation to the supplementary affidavit of Haji Mohd. Saufi. Ex. "MS 2" contains a copy of what would appear to be an extract from ex. "MS 1" by which the plaintiff seeks to prove that the part payment of $70,540 was made by the defendant to the plaintiff in relation to the account given therein, and that this payment was made by virtue of a cheque a copy of which is also included in ex. "MS 2". The supporting affidavit of the same deponent contains an exhibit ex. "MS 1" which in relation to this payment indicates that the payment was received on 23 April 1986. However, a perusal of ex. "MS 2" indicates clearly that what was comprised in the payment of $70,540 included items dated June 1986 and February 1987. Obviously, if payment was made on 23 April 1986, it could not

have comprised payment in respect of these items which occurred later in time. Further, by paragraph 5 of the defence, the defendant is asserting that none of the invoices or documents in relation to the items listed in ex. "MS 1" had been received or acknowledged by the defendant. It was submitted that, if the claim of the plaintiff is to be supported, supporting documents should have been disclosed to justify or prove the items listed in ex. "MS 1". A perusal of the items listed in ex. "MS 1" shows that they do not explain themselves. It is true that there is no affidavit challenging the allegation in the supplementary affidavit of Haji Mohd. Saufi in relation to the part payment, but as already indicated, ex. "MS 2" itself which purports to support the payment is not clear in itself because it contains items which would appear to have occurred after the alleged payment, and is therefore insufficient proof in my view that payment was made in relation to the items listed therein by the defendant.

It is true that the onus falls upon the defendant to satisfy the court that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of the claim. It seems clear from the defence that the defendant is putting the plaintiff to strict proof of the items claimed by it under ex. "MS 1" or ex. "A" to the statement of claim. I have also pointed out the discrepancies in relation to the part payment of $70,540 in relation to the items purportedly occurring after the alleged payment. I consider that, bearing in mind the said onus referred to, although the defendant may not have satisfied the court with regard to any specific issue or question in dispute which should go to trial, for the reasons given, it has succeeded in satisfying this court that for some other reason there should be a trial of the claim of the plaintiff, and that the some other reason is that ex. "A" or ex. "MS 1" in the light of the denials of the defendant, despite the supporting affidavit, does not appear to prove itself in respect of each and every item having regard in particular to the discrepancies earlier referred to; and secondly, it seems clear that the claim of the plaintiff requires a closer investigation, and in this connection, I would quote the case of *Miles* v. *Bull*[3] at p. 637 where Megarry J. (as he then was) in his judgment states:

> "Under rule 3 and rule 4 of the present R.S.C. Order 14, the defendant can obtain leave to defend if ... the defendant satisfies the court 'that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial'. These last words seem to me to be very wide. They also seem to me to have special significance where (as here) most of all of the relevant facts are under the control of the plaintiff, and the defendant would have to seek to elicit by discovery, interrogatories and cross-examination those which will aid her."

I pause here to observe that there is no allegation by the plaintiff beyond the allegation that the particulars sent to the defendant were those as listed in ex. "A" in the statement of claim which, as I have indicated, does not explain itself having regard to the challenge in the defence by the defendant of the items as claimed against the defendant. The passage continues:

> "If the defendant cannot point to a specific issue which ought to be tried, but nevertheless satisfies the court that there are circumstances that ought to be investigated, then I think those concluding words are invoked. There are cases when the plaintiff ought to be put to strict proof of his claim, and exposed to the full investigation possible at a trial; and in such cases it would, in my judgment, be wrong to enter summary judgment for the plaintiff."

Later in the same passage, the learned judge stated:

> "The words 'there ought for some other reason to be a trial' seem to me to give the court adequate powers to confine R.S.C. Order 14 to being a good servant and prevent it from being a bad master. If I may adopt the language of Lord Parker of Waddington in *Daimler Co. Ltd.* v. *Continental Tyre and Rubber Co. (Great Britain) Ltd.* [1916-17] All E.R. Rep. 191, referred to in the notes to R.S.C. Order 14 in *The Supreme Court Practice* 1967, if the circumstances of the case are 'such as to require close investigation', this will 'preclude the propriety of giving leave to sign judgment under Order 14 rule 1'. The question is thus whether this is such a case."

I consider that this is such a case, and for the reasons given, it requires close investigation. I would add that for the same reasons, I am not satisfied that the defence has been made *mala fide.*

Accordingly, in the light of the further argument, and for the reasons given, I reaffirm my decision made in chambers that the application of the plaintiff is dismissed with costs.

Order accordingly.

Solicitors: *M.S. Sandhu & Co.; Kanavathi & Co.*